



Canadian
HIV/AIDS
Legal
Network

Réseau
juridique
canadien
VIH/sida

L E G A L N E T W O R K N E W S

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It's a Date!

Reserve the dates of **June 11–12, 2010**. The Legal Network's AGM and 2nd Annual Symposium on HIV, Law and Human Rights will be held in Toronto. Stay tuned for event details!

CAMR campaign

Your efforts have paid off! Following a very tight vote (143–127), Bill C-393, a private member's bill introduced by MP Judy Wasylycia-Leis, passed second reading at the House of Commons, meaning our proposals to streamline Canada's Access to Medicines Regime (CAMR) will be studied by committee. This is the next crucial step toward finally fixing a law that was passed more than 5 years ago with good intentions but has so far led to only one lower-cost AIDS drug for one developing country.

This encouraging result was achieved thanks to the support of our members and allies. Thousands of postcards, letters and e-mails have been sent to Parliamentarians, and concerned individuals from across the country have been calling MPs to press for change. For further details, see our update here: www.aidslaw.ca/camr.

How did your MP vote on Bill C-393? Check here: <http://tinyurl.com/ya5t7ux>. Please send a message of thanks to your MP if he or she supported Bill C-393 at second reading. If your MP voted against the bill, please let them know of your disappointment and that you would like them to get on board with these sound proposals to help people in developing countries get more affordable medicines.

As part of the campaign, we released a national public opinion poll showing 80% of Canadians support or strongly support fixing CAMR, and an open letter from prominent Canadians calling on Parliament to act. Signatories include former Prime Minister Paul Martin, former Lieutenant Governor of Ontario James Bartleman, former UN Special Envoy for HIV/AIDS in Africa Stephen Lewis, past International President of Médecins Sans Frontières Dr. James Orbinski, arts leader Karen Kain and environmental activist David Suzuki (see letter and full list of signatories here: <http://tinyurl.com/26qmcm6>).

Now our campaign must continue; we need to ensure a stronger base of support for the proposed reforms, in the face of powerful opposition by the brand-name pharmaceutical lobby.

Meanwhile, the virtually identical Bill S-232, sponsored in the Senate by (retired) Senator Yoine Goldstein and now Senator Sharon Carstairs, moved through committee hearings this past fall, with the benefit of the Legal Network's detailed submissions and testimony in October. We continue working with allies to push that bill forward.

Finally, thanks to everyone who attended the successful fundraiser held November 20 in Toronto to mark Universal Children's Day, especially featured singer-songwriter Jeffrey Straker (<http://jeffstraker.com/>) and guest speaker David Morley, President and CEO of Save the Children Canada. As part of our campaign, we've secured a public commitment from Canada's largest generic drug-maker, Apotex, that if CAMR is fixed, it will use it to produce a much-needed paediatric

antiretroviral combination drug that can be supplied to treat children with HIV in developing countries.

Women's Rights

Coinciding with the 16 Days of Activism Against Gender Violence Campaign, the Legal Network released *Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS*. This two-volume legislative resource (entirely available on-line at www.aidslaw.ca/womensrights) offers ways to reform laws to tackle sexual and domestic violence, and family and property issues and protect women's human rights, particularly for countries within sub-Saharan Africa. The Legal Network is also putting the resource to good use, having prepared an *amicus curiae* brief to support Women and Law in South Africa (WLSA) in challenging the inequitable division of marital property under Malawian law that economically disadvantages women. On the domestic front, the Legal Network is planning a February 2010 consultation with Canadian HIV and women's rights activists to craft an agenda for women's rights policy issues in Canada.



Auspicious AIDSLEX launch

Since the October launch of "AIDSLEX", the AIDS and Law Exchange, thousands of on-line visitors from 162 countries have used the website. AIDSLEX has a wealth of information and features that promote the exchange of information and ideas on HIV, the law and human rights. Later this month, UN Special Rapporteur on the Right to Health **Anand Grover** will participate in a question-and-answer session. Have you visited the site at www.aidslex.org? If not, register as a user so you can contribute to discussions and the extensive collection of materials from around the world on HIV, law and human rights.

LFO Fellowship

The Law Foundation of Ontario awarded Richard Elliott, our Executive Director, with one of only three, province-wide Community Leadership in Justice Fellowships to do research, education and advocacy work on CAMR. The fellowship is held at a host academic institution, in this case the University of Toronto Faculty of Law, between September 2009 and March 2010. In addition to the extensive work under way in support of CAMR reforms, Richard will be contributing to the academic environment through guest lectures and the faculty's International Human Rights Program. Richard has already given 4 lectures, with more to follow in the New Year.

Central Asian Drug Policy

The Legal Network just completed an extensive assessment of national legislation in six former Soviet Union countries (Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). The project was supported by the Regional Office for Central Asia of the United Nations Office on Drugs and Crime (UNODC), with participation of experts from each country. The report recommends amending laws and policy documents to ensure consistency with international human rights standards and effective HIV treatment and prevention for people who use drugs and people in prisons, including removing criminal or other penalties for possession of small quantities of drugs for personal use; guaranteeing access to a comprehensive range of harm reduction services; eliminating provisions and practices such as compulsory HIV or drug testing; reforming "drug user registry" systems and protecting patients' rights; and strengthening protection against discrimination, including for people living with HIV and people who use drugs. Already the project has prompted modest legislative reforms in a few of the participating countries, and the final report will serve as a basis for further legal and policy reforms in Central Asia and Azerbaijan. Once published by UNODC in English and Russian, the full report will contain a summary of each country assessment and an in-depth analytical report.

Criminalization

The Legal Network remains very concerned about the increasing use of criminal law in cases of HIV non-disclosure since the Supreme Court of Canada's landmark judgment a decade ago in *R. v. Cuerrier*. That decision left many questions unanswered about how far the law can or will go in

prosecuting people, and has prompted a significant and sustained “criminalization creep” in the years since. This past year, the first cases to address some of these questions began to make their way to appellate courts across the country. The Legal Network was there to intervene before the courts, but it’s clear that multiple efforts will be needed if we hope to convince courts to constrain appropriately the use of the criminal law. In the past year, the Legal Network has intervened or is seeking to intervene in several cases.

In November, we received a decision of the B.C. Court of Appeal in *R. v. Wright*. The judgment is troubling in several respects. In particular, the court was unwilling to rule out the possibility of a conviction for aggravated sexual assault where someone does not disclose his or her HIV-positive status but uses a condom, saying instead this was a matter appropriately left to a jury to decide. The Court did, however, accept that viral load is “very relevant to determining whether there was a significant risk of serious bodily harm”, the test set out by the Supreme Court of Canada in *Cuerrier* for deciding whether there is a duty to disclose HIV-positive status. This *may* help in other cases where it could be argued that an accused person’s undetectable viral load meant there was no “significant risk” of transmission, and hence no crime of assault for not disclosing.

Indeed, both the issue of viral load and condom use are at issue before the Manitoba Court of Appeal in *R. v. Mabior*. The Legal Network is intervening to challenge the trial judge’s decision, which stated that *both* undetectable viral load *and* the use of condoms are necessary to put the risk of transmission below the level of “significant risk”. We argue that either one or the other would be sufficient based on scientific evidence and decisions in some other cases. The case will be heard early next year. We hope to advance similar arguments before the Quebec Court of Appeal in *R. v. DC*, the case of the woman accused of HIV non-disclosure by an abusive ex-partner. We are currently seeking intervener status in that case jointly with COCQ-sida, the provincial AIDS network.

On the Go

Senior Policy Analyst Alison Symington began a maternity leave at the end of September and we are pleased to announce that baby Jacob arrived healthy and happy on October 11. We welcome Cécile Kazatchkine, who is replacing Alison during her leave. Cécile is a dynamic and accomplished young lawyer from France who has extensive experience working internationally.

Legal Network staff members are actively involved in other organizations responding to HIV/AIDS. Another of our Senior Policy Analysts, Sandra Chu, is now on the board for the Teresa Group, serving children and families affected by HIV/AIDS. Gilles Marchildon, Director of Communications, is a board member of Toronto’s new francophone ASO, Action Positive VIH/sida. Our Outreach Coordinator, Lindsey América-Simms, continues to volunteer with the AIDS Committee of Toronto (ACT), and is a steering committee member for AIDS ACTION NOW! Richard Elliott is sitting on the committee coordinating Track F (on policy, law and human rights) for the International AIDS Conference. AIDS 2010 will take place in July 2010 in Vienna, Austria, and for the first time, “human rights” is the theme of the conference.

Finally, next month, the Legal Network’s founding Executive Director, Ralf Jürgens, will become Senior Advisor for the Global Fund, working directly for Executive Director Michel Kazatchkine (replacing Ian Grubb during his leave of absence). He will occupy that position until at least July 2010 before returning to Canada to continue consulting work for OSI, UNAIDS, WHO and the Legal Network, among others.

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About the Canadian HIV/AIDS Legal Network

The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada’s leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.

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